NOTIFICATION

LAW DEPARTMENT

Bangalore, No. LAW 59 LCA 65, Dated the 18th June 1965.
(Jyeishta Saka E17a 887.)

Ordered that the Joint Committee on the Companies (Second Amendment) Bill, 1964, which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 15th April 1965 be republished in the *Mysore Gazette*, for general information.

By Order and in the na.ne of the Governor of Mysore,

H. K. ANANTHASUBBA RAO,
Under Secretary to Government,
Law Department.

GOVERNMENT OF INDIA

New Delhi, Tuesday, February 23, 1965/Phalguna 4, 1886

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Companies Act, 1956 was presented to Lok Sabha on the 23rd February, 1965 :—

Composition of the Joint Committee

LOK SABHA

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Sriyuths :—

2. Seth Achal Singh
3. A. Shanker Alva
4. Ramachandra Vithal Bade
5. Rajendranath Barua
6. Bali Ram Bhagat
7. Dinen Bhattacharya
8. N. C. Chatterjee
9. Sachindra Chaudhuri
10. N. Dandeker
11. Raja P. C. Deo Bhanj
12. Bhaskar Narayan Dighe
13. G. N. Dixit
14. Gajraj Singh Rao
15. Prabhu Dayal Himatsingka
16. Cherian J. Kappen
17. R. N. Yadav Lonikar
18. Madhu Limaye
19. Ghanshyamlal Oza
20. Shivram Rango Rane
21. J. Ramapathi Rao
22. R. V. Reddiar
23. Era Sezhiyan
24. Swami Ramanand Shastri
25. Digvijaya Narain Singh
26. Sivamurthi Swami
27. Radhelal Vyas
28. K. K. Warior
29. Nagendra Prasad Yadav
30. T. T. Krishnamachari

Rajya Sabha

31. Liladhar Asthana
32. Mohan Singh
33. Babubhai M. Chinai
34. Vimalkumar M. Chordia
35. Khandubhai K. Desai
36. Suresh J. Desai
37. *Smt.* Shyam Kumari Khan
38. Prof. Mukut Behri Lal
39. Dahyabhai V. Patel
40. P. Ramamurti
41. N. Sri Rama Reddy
42. Awadheshwar Prasad Sinha
43. Rajendra Pratap Sinha
44. Hira Vallabha Tripathi
45. Ramesh Chandra Vyas

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*

2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of*

REPRESENTATIVE OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*

2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*

3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Companies Act, 1956 was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 21st September, 1964. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri T. T. Krishnamachari the Minister of Finance, on the 17th December, 1964 and was discussed on the 17th, 18th and 21st December, 1964 and was adopted on the 21st December, 1964.

3. Rajya Sabha discussed and concurred in the said motion on the 24th December, 1964.

4. The message from Rajya Sabha was published in the *Lok Sabha Bulletin, Part II,* dated the 26th December, 1964.

5. The Committee held 9 sittings in all.

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* Published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 21st September, 1964

6. The first sitting of the Committee was held on the 26th December, 1964 to draw up a programme of work. The Committee at this sitting decided to hear evidence of associations, etc., desirous of presenting their views or suggestions before the Committee and to issue a press communique inviting memoranda for the purpose by the 15th January, 1965.

7. Thirty-one memoranda/representations on the Bill were received by the Committee from different associations/individuals.

8. At their second to sixth sittings held on the 18th to 21st January and 2nd February, 1965, respectively, the Committee heard the evidence given by ten Associations/bodies.

9. The Committee have decided that the evidence given before them should be laid on the Tables of both the Houses *in extenso*.

10. The Committee considered the Bill clause by clause at their seventh and eighth sittings held on the 3rd and 5th February, 1965, respectively.

11. The Committee considered and adopted the report on the 17th February, 1965.

12. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

13. *Clause* 5: It was represented to the Committee that if the existing Companies were also to be required to re-draft their object clauses, then that would require the passing of special resolution under the Act, which would involve tremendous time and effort not commensurate with the results intended. The Committee, therefore, feel that this clause should be amended to provide that the provisions of existing clause (c) of Section 13 of the Act should continue to apply to companies in existence immediately before the commencement of the Companies (Amendment) Act, 1965 and the provisions of the proposed new clause requiring the division of objects into (i) main objects and objects ancillary thereto and (ii) other objects should apply only to new companies.

The clause has been amended accordingly.

14. *Clause* 9: The Committee noted that the entire amount of the minimum subscription for shares is not invariably called for at one time and feel that the proposed new sub-section (4) (b) should apply only to the amount payable on applications in respect of the minimum subscription.

The Committee also feel that the punishment clause in the existing sub-section (4) of Section 69 of the principal Act should be retained.

The clause has been amended accordingly.

15 *Clause* 11: The Committte feel that in sub-clause (a) of the clause, the words " and only book adjustment has been made without cash having passed " are redundant and shou ld be omitted.

The clause has been amended accordingly.

16. *Clause* 12: The amendment made in the clause is clarificatory in nature.

17. *Clause* 13: The Committee are of the opinion that an instrument of transfer, executed before the coming into force of this measure but which is not in conformity with the proposed provisions of sub-section (1A) of Section 108 of the principal Act, should also be accepted by a company upto a period of six months from the date of coming into force of the Companies (Amendment) Act, 1965.

The Committee also feel that the provisions of this clause should not prevent any person from depositing, by way of security, any shares with the State Bank of India or any Scheduled Bank or financial institution approved by the Company Law Board by notification in the Official Gazette.

The Committee further feel that in order to avoid hardship in any case, the Company Law Board should be empowered, on an application made to it in that behalf, to extend the period mentioned in the proposed sub-sections (1A) and (1B) in the clause by such further time as that Board might deem fit. Information relating to the number of extensions so granted by the Board and the period of each such extension should, however, be furnished in the annual report laid before the Houses of Parliament under Section 638 of the Companies Act, 1956.

The clause has been amended accordingly.

18. *Clause* 15: The Committee feel that this clause should not apply to—

(*a*) any existing company except where it commences any new business which is not germane to the business which it is already carrying on at the commencement of this Bill, when enacted;

(*b*) any new company except where it commences any business in relation to its objects which are not its main objects or objects incidental or ancillary thereto.

The Committee also feel that private companies should continue to be excluded from the purview of Section 149 as at present. Sub-clause (b) of this clause has accordingly been omitted

The Committee further feel that even if a special resolution can not be passed when it is required, the Company Law Board should be empowered to allow the company to commence such business even if it is passed by a simple majority which is not sufficient for the passing of a special resolution.

The clause has been amended accordingly.

19. *Clause* 16: The amendment is of a drafting nature

20. (*Original Clause*) 17 : The clause has been omitted as a consequence of the omission of original clause 42 (*See* para 26 below)

21. *Clause* 20 (*Original Clause* 21) : The Committee feel that a company may be required under the proposed clause (d) of sub-section (1) of Section 209 to include the prescribed particulars in its books of account only if it pertains to a class of companies engaged in production, processing, manufacturing or mining activities and all other companies belonging to that class are required to include such particulars in their books of account. The Committee also feel that the inspection by the Registrar, or an officer authorised by the Company Law Board, should be a routine feature and not be of an *ad hoc* or special nature.

The Committee are also of the view that it should be clarified that the books of account will also include vouchers which should be made availble for inspection and investigation and should be preserved for a period of 8 years.

The clause has been amended accordingly. The other amendments are of a drafting nature.

22. *Clause* 21 (*Original Clause* 22): The committee feel that in regard to the transactions of the company represented merely by book entries, the auditor should inquire whether they are not prejudicial to the interest of the company.

The Commtitee also feel that the Central Government should consult the Institute of Chartered Accountants of India before issuing an

order, general or special in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.

The clause has been amended accordingly. The other amendments are of a verbal and drafting nature.

23. *Clause* 23 (*Original Clause* 24): It was represented to the Committee that the number of Cost Accountants in practice in this country is extremely limited and that, therefore, Cost Audit, if it was to be extensive, will have to be entrusted to Chartered Accountants also. The Committee are of the opinion that this difficulty could be got over by providing specifically that the Chartered Accountants who may possess the prescribed qualifications should also be allowed to undertake cost audit under this clause.

The Committee have also noted that since the cost audit was likely to reveal certain information which was regarded as confidential by the companies, the cost audit report should be filed with the Company Law Board and *not* with the Registrar and a copy of the report should be sent to the company.

The clause has been amended accordingly.

24. *Clause* 25 (*Original Clause* 26): The Committee feel that under the provisions of the proposed sub-section (1A) of Section 240 of the principal Act, the Inspector should have the power, with the previous approval of the Central Government, to call for information or production of books and papers for the purpose of his investigation only from a body corporate and not from a firm or an individual.

The Committee also feel that the Inspector should not keep in his custody books and papers of a company required for the purpose of his investigation, for a period of more than six months after which he should return the same. He may, however, be authorised to call for the books and papers again if they are needed by him.

The clause has been amended accordingly.

25. *Clause* 35 (*Original Clause* 36): The Committee are of the view, that the proposed restrictions on the age limit of a director should be applicable only in the case of directors of a public company or of a private company which is a subsidiary of a public company.

The clause has been amended accordingly.

26. (*Original Clause* 42): The Committee feel that it would be difficult for the companies to note beneficial holders of more than five

per cent of the equity share capital unless the concerned shareholders themselves intimate such holdings.

The Committee have, therefore, omitted this clause from the Bill.

27. *Clause* 41 (*Original Clause* 43) : The Committee feel that the words " and such practice is his principal occupation " are not necessary and should be omitted from the clause.

The clause has been amended accordingly.

28. *Clause* 42 (*Original Clause* 44) : The Committee feel that the fee for attendance of a meeting of the Board or a Committee thereof should not be limited to one hundred rupees only as that is a very small sum and that the limit may be fixed at two hundred and fifty rupees.

The clause has been amended accordingly.

29. *Clause* 44 (*Original Clause* 46) : The Committee are of the opinion that no special resolution should be necessary in the case of loans made to other bodies corporate not under the same management as the lending company, when the aggregate of such loans does not exceed ten per cent of the aggregate of the subscribed capital of the lending company and its free reserves.

The Committee are also of the view that certain financial institutions should be exempted from the operation of this clause in the same manner as under sub-section (14) of Section 372 of the principal Act which restricts inter-corporate investments.

The clause has been amended accordingly. The other amendment is of a clarificatory nature.

30. *Clause* 51 (*Original Clause* 53) : The amendment is of a consequential nature.

31. *Clauses* 52 *and* 53 (*Original Clauses* 54 *and* 55)—The Committee feel that in order to avoid delay in the liquidation proceedings the Official Liquidator should be given requisite information as soon as final meetings are held by the companies concerned accepting final dissolution so that the Official Liquidator could keep in touch with the affairs of such companies and there is no delay in his report o the Court.

The clauses have been redrafted accordingly.

32. The Committee recommend that the Bill, as amended, be passed.

S. V. KRISHNAMOORTHY RAO,

Chairman,
Joint Committee.

NOTE

I do not want to give any minute of dissent, as I have finally not dissented from the decisions arrived at. But I have always felt and even now feel that restrictive provisions in law should not be introduced unless the same be necessary to prevent any fraud or dishonest practice or necessary to improve the standard.

In any event, no provision should be introduced if the only result is additional expense without any corresponding benefit.

There are some Clauses which come within both the above categories. They offer unnecessary opportunity for criticism of Government.

P. D. HIMATSINGKA

MINUTES OF DISSENT

I

I believe too frequent amendment of the Company Law is uncalled for. It does not allow the Corporate Sector of our economy to settle down to normal functioning. The Company Law was completely revised in 1956 with far-reaching amendments contained in as many as 658 Sections and 12 Schedules. Immediately thereafter, there were extensive amendments in 1960, then in 1962, then again in 1963 and further in 1964. The present Bill (Second Amendment Bill of 1964) is the fifth amendment Bill since the all-total revision of the Companies Act in 1956.

It is well-known that the cases into which the Vivian Bose Commission of Inquiry looked into and about which the Daphtary-Shastri Committee recommended, arose under the Companies Act of 1913, when the law and its administration were both loose and less stringent. But after major revision of the Company Law in 1956, as the Government spokesmen in the Parliament have themselves stated, there has hardly been any serious infringement of the Law. The Reports on the working and administration of the Companies Act also bear this out from year to year. It seems, however, while paying lip-sympathy to the role of the Corporate Sector in our mixed economy the Government are out to catch every pretext to enfetter the normal functioning of companies and assume more and more powers for themselves, which of course would give rise to corruption and political patronage.

This is especially unfortunate at a time when the economy of the country is in a sorry plight. Shortages all around, failure to achieve targets, soaring prices and a critical foreign-exchange position are but symptoms of the economic mess in which the Finance Ministry finds itself today. The capital market is dead and the investment climate has petered out. The only sane policy at this juncture is to help mobilise more and more savings into channels of joint-stock activity, with a view to rapidly increase production in all sectors of the economy. Frequent, undue and unimaginative tightening of the Company Law and vesting wide powers into the hands of the officials and their subordinates, positively defeat this purpose, discourage corporate activity in the country and disillusion the hesitant foreign participant in equity capital.

Coming to the specific provisions of the Bill as emerging out of the Joint Committee, Clause 13 now provides that all transfers of shares shall be in a prescribed form, with the date stamped thereon by the prescribed authority and shall be delivered to the Company for registration within six months in the case of quoted shares and within two months in all other cases. Transfers deposited with the State Bank or any Scheduled Bank or financial institution approved by the Company Law Board, by way of security against a loan, are exempted. The Company Law Board are also empowered, in cases of hardship, to extend the time limit for delivering the transfers to the Company for registration. I believe this time limit of six months and two months is too short and should be extended at least to one year clearly in the statute. Moreover, exemptions should also have been made in the case of recognised trust holding blank transfers given by the trustee nominally holding in his name the shares belonging to the trust, in the case of companies giving guarantees and in the case of a company nominating a director on the board of another company and allowing that director to hold the qualification shares in his own name. Transfers of shares of private companies should also have been exempted, as recommended by the Inquiry Commission. I also believe that the issue of thousands of prescribed transfer forms daily, with the date marked thereon, by one prescribed authority, would only entail undue delay, thereby impairing the normal working of the stock exchanges in the country and giving rise to corrupt practices.

Clause 35 precludes a person from holding the directorship of a public company or of a private company which is a subsidiary of a public company, after he attains the age of seventy-five. I believe holding of high offices after the age of seventy-five should not be the privilege of politicians only. When a company in a general meeting approves by a special resolution any director continuing on its board after he attains the age of seventy-five, he should be allowed to continue. This will help the company to be assured of the experienced direction of a founder or a promoter, if he is in active health after the age of seventy-five.

Clause 44 widens the restrictions under Section 370 of the principal Act, on inter-company loans. The new proviso prescribes a limit of thirty per cent of the subscribed capital and free reserves of the lending company, for loans to any body corporate, not under the same management as the lending company and a limit of twenty per cent of the subscribed capital and free reserves of the lending company for loans to companies under the same management as the lending company. Within these limits (except up to ten per cent of the subscribed capital and free reserves of the lending company for loans to companies not under the same management) a special resolution authorising the lending company to make loans up to the prescribed limits would be now required. For making loans beyond these prescribed limits, prior

approval of the Central Government will have to be obtained. I believe these restrictions are unnecessary and would only hamper the free flow of essential day-to-day working capital. Many companies have surplus funds while many others are in need of funds to tide over temporary difficulties. The surplus funds adjust themselves to the emergent spots at the proper rate of interest for just the necessary time. The prior approval of the Central Government for making loans beyond the prescribed limits, which by themselves are meagre may take six to eight months, by which time the very purpose of the loan would be lost. This clause ignores the essential temporary and emergent character of inter-company loans and would only make the day-to-day working of companies more difficult and irksome. The existing provisions of the Companies Act (Sections 295, 369 and 370) already provide for the necessary restrictions on the powers to make loans and further restrictions are absolutely uncalled for.

Everybody appreciates that a certain degree of control over management is necessary in the interest of the investing public. But the existing Company Law is already voluminous and complex. Even now for almost everything the companies have to look to the Government for approval. Before the companies know the existing law and normalise themselves, a further spate of amendments are coming almost every year, at times twice a year. Such incessant bewildering change of law in a vital sphere of productive activity, would only imperil the economy of the country.

II

यह प्रसन्नता की बात है कि प्रवर समिति में हुई चर्चा के फलस्वरूप कम्पनी संशोधन विधेयक में कई संशोधन किये गये। फिर भी कुछ बातों के संबंध में असहमति होने के कारण यह असहमति-पत्र प्रस्तुत कर रहा हूं।

संशोधन विधेयक के खंड 3 के उपखंड (1) में जो "Voucher" शब्द जोड़ा जा रहा है उसके परिणामस्वरूप प्रत्येक कम्पनी को 8 वर्षों तक समस्त आधार-पत्र, जिनमें न्यूनतम दाम के भी सम्मिलित रहेंगे, सम्भाल कर रखने पड़ेंगे। यह अनावश्यक एवं कठिन कार्य है। अत एव आधार-पत्रों के मूल्यों की सीमा बांध दी जानी चाहिये। मेरे मत से कम से कम 500 रुपये के मूल्य से अधिक के ही रखना आवश्यक होना चाहिये।

संशोधन विधेयक के खण्ड 3 के उपखण्ड (2) के द्वारा जो अधिकारी की परिभाषा में व्यापकता लाई जा रही है उसमें यह कठिनाई आ सकती है कि प्रस्तावित परिभाषा के अन्तर्गत जिसको कम्पनी अधिकारी नहीं माने उसे कम्पनी प्रशासक अधिकारी माने। परिणामस्वरूप, व्यर्थ ही विवादास्पद स्थिति निर्माण होगी। अत एव यह अवश्यक है कि कम्पनी प्रशासन प्रतिवर्ष यह घोषित करें कि अमुक अमुक व्यक्ति भी "अधिकारी" की श्रेणी में आता है जिसके बारे की जानकारियां विधान के अनुसार कम्पनियों को देनी पड़ती हैं, वे दे सकें।

संशोधन विधेयक के खण्ड 8 द्वारा मूल विधान की धारा 68 ए में संशोधन चाहा गया है जिसके परिणामस्वरूप कम्पनी से हिस्से प्राप्त करने के लिये यदि कोई व्यक्ति बनावटी प्रार्थना-पत्र दे अथवा कम्पनी को बनावटी नाम पर हिस्से देने, पंजीकृत करने, हस्तान्तरित करने में प्रेरित करे तो वह सजा का पात्र होगा।

कभी इस प्रकार की स्थिति का निर्माण हो सकता है कि बनावटी नाम पर हिस्से दिये जाने आदि के बारे में आये प्रार्थना-पत्र को जब संचालक विचारार्थ लेकर, यह न जानते हुए कि यह प्रार्थना-पत्र बनावटी है अथवा सही, उसको देने, पंजीकृत करने अथवा हस्तान्तरित करने का आदेश दे सकते हैं, वैसी स्थिति में संचालक अथवा सम्बन्धित अधिकारी प्रेरित करने की परिधि में आते हैं और बिना जाने किये कार्य के लिये भी 5 वर्ष के कारावास के भागी बन सकते हैं। उस स्थिति से बचने के लिये यह अत्यन्त आवश्यक है कि प्रस्तावित धारा 68 ए (1) में "कोई भी व्यक्ति जो" ("any person who") के स्थान पर "कोई भी व्यक्ति जो जानबूझ कर" ("any person who knowingly") लिखा जाना चाहिये।

संशोधन विधेयक के खंड 8 के द्वारा जो भी व्यक्ति बनावटी प्रार्थना-पत्र देगा, उसे दण्डित किया जायेगा। किन्तु उसको ऐसी गलत सलाह देने वाले व्यक्ति को दण्ड का भागी नहीं बनाया गया। अत एव प्रस्तावित धारा 68 ए (1) (ए) में "makes" के स्थान पर "makes or causes to be made" लिखना चाहिये।

संशोधन विधेयक के खंड 13 में काफी परिवर्तन किये गये हैं। फिर भी इसमें ट्रस्ट के पास रहने वाले हिस्सों को भी संशोधन के द्वारा चाहे गये बन्धनों से मुक्त रखना चाहिये। कारण विधान के अन्तर्गत ट्रस्ट के नाम पर हिस्से पंजीकृत

नहीं किये जा सकते; वे किसी भी ट्रस्टी अथवा ट्रस्ट के नामांकित व्यक्ति के ही नाम राजिस्टर किये जा सकते हैं, जिससे ट्रस्ट का अहित हो सकता है। उस अहित से बचने के लिये ट्रस्ट में यह परम्परा चली आ रही है कि ट्रस्ट के पास शेयर सर्टिफिकेट तथा ब्लैंक ट्रांसफर के पत्रक रहते हैं। उस परम्परा से कोई हानि प्रतीत नहीं होती। अत एव ट्रस्ट के पास रहने वाले हिस्सों को भी चाहे गये बन्धनों से मुक्त रखना चाहिये।

संशोधित संशोधन विधेयक के खंड 20 से उप-खंड (व) द्वारा चाहा गया है कि कम्पनी के रजिस्ट्रार अथवा केन्द्रीय शासन द्वारा नियुक्त कोई भी अधिकारी बिना पूर्वसूचना दिये कम्पनी के हिसाब, किताब कागजात आदि देख सकता है।

उपयुक्त यह होता कि इस विधान में यह कोई भी अधिकारी के रूप में व्यापक शासन व्यापन अधिकार लेने की अपेक्षा यह बन्धन रखें कि कोई भी अधिकारी जो असिस्टेंट रजिस्ट्रार से कम पद वाला न होगा उसी को जांच के लिये अधिकृत किया जावेगा।

साथ ही सूचना दिये बिना ही जांच करने जाना व्यर्थ की परेशानियां बढ़ाना होगा।

संशोधित संशोधन विधेयक के खंड 41 के द्वारा मूल विधान की धारा 309 में संशोधन चाहा गया है जिसके द्वारा संचालक द्वारा यदि तकनीकी योग्यता के कारण भी प्राप्त रकम पर भी बन्धन लगाया जाना है। जिस प्रकार व्यावसायिक (professional) प्रकार की सेवाओं को इसमें मुक्त किया गया है इसी प्रकार तकनीकी सेवाओं को भी मुक्त किया जाना चाहिये।

नई दिल्ली,
17 फरवरी 1965.

विमल कुमार चौरड़िया.

III

The Bill as reported by the Joint Committee has emerged greatly improved. I am largely in agreement with the various changes that have been made. I have, however, some changes to suggest in regard to some clauses mentioned below :

Clause 20 (*Original Clause* 21): In original clause 21, it was provided that the books of account shall be open to inspection during business hours by the Registrar or by any officer authorised by Government. It was also provided by means of a proviso, that no such inspection shall be made by the Registrar or such Officer unless he is of opinion that sufficient cause exists for such inspection. The proviso has been deleted by the Joint Committee and it is stated in the Report that the Committee feel that the inspection by the Registrar or an officer authorised by the Company Law Board should be a routine feature and not be of an *ad-hoc* or special nature. I feel that this change is not reasonable and that inspection should be made by the Registrar or other Officer only if he is satisfied or is of opinion that sufficient cause exists for the inspection. The original provision should stand.

Clause 27 (*Original Clause* 28): This clause amends section 241 and provides that interim reports submitted by an Inspector need not be sent to the company. I feel that the interim report as and when submitted by the Inspector should also be sent to the company. This is only fair, because if the company is furnished with a copy of the interim report, it will be able to make suitable representation to correct any misapprehension on the part of the Inspector. This will help in the final report being made on a correct appraisal of facts and circumstances.

Clause 51 (*Original Clause* 53) : This clause proposes deletion of Sections 410 to 415 thereby abolishing the present Advisory Commission and constituting instead an Advisory Committee which will not, however, have the same powers and functions as the Advisory Commission. The setting up of the Advisory Commission was fully debated in Parliament when the Companies Bill of 1953 was under discussion. It was also carefully considered by the Joint Committee on the said Bill. The Joint Committee then recommended that the Advisory Commission should adequately represent the various interests concerned and that it should be put on a permanent basis. The then Finance Minister, Shri C. D. Deshmukh, while speaking in the Lok Sabha on the functions of the Advisory Commission, expressed the hope that in course of time the Advisory Commission will help Government to build up sound traditions for regulating the working of Joint Stock Companies in this country. The Reports of the Company Law Advisory Commission for the last several years which are appended to

the Annual Reports on the Working and Administration on the Companies Act, 1956 furnish proof of its usefulness and also that it has been building up such sound traditions in respect of various matters which had come up before it. It has also, so far as I am aware, infused a sense of confidence in the business community, who have a feeling that their problems are also looked into by an impartial authority and are not dealt with arbitrarily by Government. In my opinion, it is very necessary that the sense of confidence which the working of the Advisory Commission has engendered in the business community should not be disturbed. In view of the careful consideration which had been given to this question by Parliament and by the interests concerned at the time of the deliberations on the Companies Bill, 1953, and in view of the successful working of the Advisory Commission during the past few years, I feel that the Advisory Commission should be retained. I am, therefore, for the deletion of this clause.

Clause 56 (Original Clause 58): A new section is proposed to be inserted so that Government or any person is not compelled to disclose the sources of information received by it or him to any Court, Tribunal or other authority. This provision in my opinion is not in consonance with sound Juridical principles. It will open up opportunities for supplying false information by interested parties in order to blackmail a company or those in management of a company for their ulterior objectives. Every person against whom any information is given is entitled to know the identity of the informant and has also a right to check on the integrity of the person and the authenticity of the information. I feel that if this right is not available to aggrieved parties, it will encourage black-mailing by unscrupulous persons and also encourage vindictive actions by prejudiced officers. The powers of a Court or a Tribunal which is a quasi-judicial body should not also be curtailed in an arbitrary and unfair manner.

N. C. CHATTERJEE

IV

This Bill seeks to implement the recommendations of the Commission of Inquiry and the Daphtary - Sastry Committee. The Joint Committee has taken this opportunity to :

(i) strengthen the provisions relating to investigation into the affairs of companies and provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector; and

(ii) simplify some of the procedural matters.

But if we go through the amended Bill, in all its practical aspects, we can say without any fear of contradiction that the Joint Committee have failed to meet the real object of the Bill by ignoring certain important demands of the share-holders' associations and chartered accountants' association and prominent auditors' views as urged by them in their respective memoranda and evidence tendered before the Joint Committee.

One of the main demands of the share-holders association was to provide a statutory obligation on the part of the Directors and managing agents to take necessary approval of the general body of share-holders in respect of all matters of financial dealings. Each and every share-holder should be individually informed at least one month before the meeting about the proposed resolutions and actions to be brought before the general body meeting, besides news-paper publications. Except few major financial business, there is no amendment to meet the general but rightful desire of the share-holders as such. The scope of strength and working freedom should be enlarged whereas all public limited companies' authority and scope of working should be exercised absolutely with broad based principles of democracy and soicalism by accepting all special resolutions that are passed on the basic ideology of voting, *i.e.*, "one man one vote" irrespective of his share contributions.

If this procedure is not introduced in all public limited companies, the purpose of all special resolutions would be defeated by big financial magnates in all public companies. Hence I disagree with the amended Bill simply providing special resolutions without introducing the principle of "one man one vote" irrespective of his/her share-values in that particular company. Otherwise, the affairs of companies, at least in dealing with cases of dishonesty and fraud in the Public Corporate Sector, cannot be investigated properly. The spirit of that object will be defeated.

It is necessary to appoint independent auditors with strong character for making the audit more effective and purposeful. The Central Government should maintain a list of expert auditors, Chartered Accountants and Cost Accountants in consultation with the Chartered Accountants Associations and Cost Accountants Bodies as approved by the Union Government. The rules and procedures of auditing systems in various fields should be framed and accepted with full consultation of respective recognised auditors and their organised bodies. At every step their active consultation and co-operative efforts will give good results to remove dishonesty and fraud in the Corporate Sector. The auditors' position should not be as that of a Commission agent or servant of any company, but his position should be a very powerful one who can play an eminent part to check all kinds of malpractices

committed by officials of Company Law administration or Directors of any company. Any company may go astray if such full powers are not vested in auditors and their parent bodies to supervise, guide and control the finances according to the strict observation of the respective bye-laws that are accepted by the general body of share-holders. So there should be statutory provision to have frequent consultations and investigations of frauds in the companies by the auditors or group of auditors' body with independent powers to take necessary steps to remedy the situation. Company Law administration is more powerful which is likely to become over-lord of the companies and it is but natural that absolute powers will positively corrupt the Company Law administration. Therefore, always there should be a statutory obligation on the part of the administration so that each and every action or rules and regulations of auditors and accounting system should be laid on the Table of both the Houses of Parliament. In case of glaring injustice by Company Law administration, a discussion may be raised in Parliament.

There are so many small and medium size companies having very little profit. During initial periods every company will gain no profit or there may even be some losses to the new companies. Therefore, it would be grave injustice to the directors or managing partners to fix their remuneration only on the basis of profit percentage. As a special remuneration to the working directors for a specific period at least, a total of one thousand rupees per month should be given as per the approval of the share-holders' general body meeting instead of restricting the remuneration only on profit percentage basis, certain amount as decided by the general body members should be given to the working directors according to their capacity and abilities.

Many political parties, especially the ruling party, depend upon public and private companies' donations to further their programmes. Under the existing law upto 5 per cent of the net profits can be donated to any political party as per decision of the directors only, whereas general share-holders belong to all political parties. Therefore, clause 44 (Original Clause 46) may be amended with the following proviso to check the political interference in the administration of companies.

"Provided further that the total donations so made to all political parties and charitable registered institutions corporate shall not exceed without the prior approval of the general meeting of the share-holders.

(a) Five per cent of the net profit for the current balance sheet of the previous year of the donating company;

(b) any percentage of the net profit or reserve fund of the liquidating company where all such donations are made

to any of the charitable non-political institutions as recommended and approved by the special resolution of the share-holders passed by two-third majority in such general meeting."

The assets of any liquidating company may be transferred to any one or more charitable non-political institutions as approved by the share-holders of that company. Hence I am obliged to record my minute of dissent.

SIVAMURTHI SWAMY

V

कम्पनी कानन द्वितीय संशोधन विधेयक का संयुक्त संसदीय समिति में जो संशोधित रूप बना है उसके कुछ पहलुओं से मैं सहमत नहीं हूं। अपना असहमति-पत्र मैं नीचे प्रस्तुत कर रहा हूं :—

इस कम्पनी संशोधन विधेयक का उद्देश्य कम्पनियों के संचालन में जो अनाचार और अप्रवृत्तियां पाई गई हैं उनको दूर करना है। विवियन बोस जांच समिति की रिपोर्ट से सार्वजनिक हित तथा हिस्सेदारों के हित पर तिलांजलि देकर अपना स्वार्थ साधने की समाज विरोधी प्रवृत्ति पर काफी प्रकाश पड़ा। इन प्रवृत्तियों पर रोक लगाना उचित और आवश्यक भी है। मगर केन्द्रीय सरकार तथा उसकी नौकरशाही के हाथों में अनिर्बन्ध अधिकार देने से क्या समाज हित की रक्षा होगी? वर्तमान स्थिति में अगर सरकार और नौकरशाही को हर मामले में निश्चित और सीमित नहीं बल्कि व्यापक विवेकाधीन अधिकार दिये गये तो उसके दो बुरे नतीजे निकलेंगे:

(क) सरकार को और उस पर कब्जा होने के फलस्वरूप सत्तारूढ़ दल को निजी पूंजी और निजी क्षेत्र को अपने दलीय प्रभाव में ला कर उनसे नाजायज तरीकों से चन्दा इकट्ठा करने का और ज्यादा मौका मिलेगा; (ख) भ्रष्टाचार के वर्तमान वातावरण में अपने नये अधिकारों का दुरुपयोग कर निजी क्षेत्र को और औद्योगिक संचालकों को बिना वजह सताने की धमकी देकर पैसा बनाने का नौकरशाही को भी अवसर मिलेगा। इसलिए जहां कम्पनियों के अनाचार पर रोक लगानी चाहिए वहां नौकरशाही को भी एक मर्यादा के अन्दर बांधना चाहिए। जो कम्पनियां और जो उद्योग समाजहित विरोधी काम करते हैं उनके सीधा राष्ट्रीयकरण करना अच्छा होगा बनिस्बत इसके कि सरकार और नौकरशाही को उनके ऊपर नियंत्रण रखने के हेतु हम अमर्यादित अधिकार प्रदान करें।

संयुक्त समिति द्वारा संशोधित विधेयक में केन्द्रीय सरकार को निम्न व्यापक विवेकाधीन अधिकार दिये गये हैं जिनका दुरुपयोग होने का मुझे अंदेशा है :—

(एक) खण्ड 15 के अनुसार कम्पनी की साधारण सभा में विशेष प्रस्ताव पारित न होने पर भी नया धन्धा करने की छट संचालकों को देने का अधिकार सरकार को मिलता है। अच्छा तो यह होता कि सरकार को उस में छूट देने का अधिकार न होता या विशेष प्रस्ताव की जगह पर बहुमत वाले प्रस्ताव का प्रबन्ध होता।

(दो) खण्ड 20 के अन्तर्गत बिना कोई कारण बताये या पूर्व सूचना दिये रजिस्ट्रार या और किसी सरकारी अधिकारी को कम्पनियों की हिसाब की किताबें आदि देखने का अधिकार है। इस अधिकार के बारे में मुझे कुछ नहीं कहना है। मगर मैं चाहता हूं कि किताब देखने के पहले वह अपनी राय लिखित रूप में नोट करें कि वह क्यों ये सब देखना चाहता है। इससे इस व्यापक अधिकार का दुरुपयोग नहीं होगा और कम्पनियों के अनाचार पर नियंत्रण भी रहेगा।

(तीन) खण्ड 25 के मातहत इंस्पेक्टर को कम्पनियों से जानकारी हासिल करने का या उनसे किताब आदि मांगने का अधिकार मिलता है। साथ ही यह काम करने के लिए दूसरे किसी भी व्यक्ति को अधिकृत करने की सत्ता भी उसको मिल गई है। मेरी राय में यह उचित नहीं है। यह अधिकार किन किन लोगों को होगा यह कानन ही में स्पष्ट कर देना चाहिए। मेरी राय में यह अधिकार इंस्पेक्टर स्तर के अधिकारियों ही को दिया जाये।

(चार) खण्ड 13 में अनाम हस्तांतरण (ब्लैंक ट्रांसफर) के चलन की मियाद को बढ़ाने का अधिकार कम्पनी कानन बोर्ड को मिला है। अधिक से अधिक कितना समय बढ़ाया जाय यह कानन ही में कह देना उचित होगा। मेरा सुझाव है कि यह सीमा एक साल की हो। अपील करने पर इसमें कम्पनी कानन बोर्ड द्वारा जो अपवाद किये जायेंगे उनके प्रकाशन की सिर्फ व्यवस्था करने से काम नहीं चलेगा। कंपनी कानन बोर्ड के अधिकार पर भी मर्यादा लगानी चाहिए।

(पांच) खण्ड 44 के अन्तर्गत कम्पनियों द्वारा अन्य कम्पनियों को कर्जा देने पर 30 और 20 प्रतिशत तक की मर्यादा निश्चित की गई है। मगर इसमें चाहे जितनी छट देने का सम्पूर्ण अधिकार केन्द्रीय सरकार को दिया गया है। अगर ऐसा माना जाता है कि विधेयक में जो मर्यादा रखी गई है वह बहुत कम है तो उसको थोड़ा बहुत बढ़ाया जाता। मगर बिना मर्यादा वाला अधिकार नौकरशाही को देने के पक्ष में मैं नहीं हूं।

(छे) इसी खण्ड 44 में यह संशोधन पास होने के पूर्व दिया गया कर्जा चुकाने सम्बन्धी निश्चित की गई काल मर्यादा बढाने का अधिकार सरकार ने ले रखा है। वाकई इस सरकार की और नौकरशाही की सत्तालालसा अद्भुत है। वर्तमान कानन के अन्तर्गत राजनीतिक दलों को चन्दा देने की छूट है। सरकार के हाथ में आज जो व्यापक नियंत्रण अधिकार हैं उनके फलस्वरूप सत्तारूढ़ दल ने निजी क्षेत्र से हमेशा चन्दा वसूला है। इसका लेखा जोखा वित्त मंत्रालय मंत्री ने फिलहाल ही प्रस्तुत किया है। यह कम्पनियों द्वारा दिया गया अधिकृत चन्दा है। अनधिकृत चन्दे का उसमें उल्लेख तक नहीं है। वह तो उससे कई गुना ज्यादा होगा। सरकारी जानकारी के मुताबिक 1961 के पश्चात् दो वर्षों की रपट के आधार पर कम्पनियों द्वारा कुल रु० 1,15,00,000 विभिन्न राजनीतिक दलों को दिया गया। उसमें सत्तारूढ़ दल का हिस्सा रुपया 98 लाख से भी अधिक, स्वतंत्र पार्टी का रु० 15 लाख 65 हजार, प्रजा सोशलिस्ट पार्टी का रु० 54,000, कम्युनिस्ट पार्टी का रु० 2,800 और सोशलिस्टों का सिर्फ रुपया 351 रहा। वर्तमान नियंत्रण-अधिकारों का इस्तेमाल कैसे होता है यह इन आंकड़ों से बिल्कुल साफ होता है। जिस तरह सरकार वर्तमान अधिकारों का दुरुपयोग करती है उसी तरह निजी पूंजी भी भ्रष्टाचार का इस्तेमाल कर अपने मकसद को हासिल करती है। और दोनों मिलकर आम जनता का और ग्राहकों का शोषण करते हैं। इसलिए इस विधेयक की उपरोक्त धाराओं के मैं विरुद्ध हूँ।

खण्ड 35 के जरिये सार्वजनिक कम्पनियों तथा उनसे नियंत्रित कम्पनियों के निर्देशकों पर पहले जो आयु सीमा थी वह बढाकर अब 75 की गई है। मैं

चाहता हूं कि यह सीमा 65 हो। संयुक्त समिति के सामने यह कहा गया कि अगर मंत्रियों पर आयु सीमा नहीं है तो निर्देशकों पर क्यों? मेरा जवाब यह है कि यह सीमा निर्देशकों पर भी रहे और मंत्रियों पर भी। यहां यह कहना गैर-मुनासिब नहीं होगा कि सरकारी नौकरों के लिए यह आयु सीमा 58, उच्च न्यायालयों के जजों के लिए 60, और सर्वोच्च न्यायालय के जजों के लिए 65 है। फिर निर्देशकों के लिए अपवाद क्यों? जब तक ऐसी सीमा नहीं रहेगी औद्योगिक तथा दूसरे किसी क्षेत्र में युवकों को और नये लोगों को कोई मौका नहीं मिलेगा आगे बढ़ने का या तेजी से नवनिर्माण करने का।

मधु लिमये.

VI

We are afraid that the present piece of Legislation, far from removing the lacunae and plugging the loopholes, has given further lease to the malpractices by the companies and corporate sector. It is regrettable to note that even the amendments that were suggested in the Bill have been watered down in the Joint Committee.

Regarding the blank transfer system, we strongly feel that it should have been completely abolished as in the United Kingdom. While the Government is fully aware of the havoc done by the business tycoons with the nefarious practice of blank transfer system, still they plead helpless in rooting out this evil. Coming to clause 23 (original clause 24) the Joint Committee have recommended that chartered accountants who may possess the required qualities should also be allowed to undertake cost audit. The reasons that the number of cost accountants in practice is very limited does not appear to be justified to us. We feel that if enough scope is given, more cost accountants will become available. Even if the required number of cost accountants were not forthcoming the Government may have constituted a separate cadre of cost accountants as full time public servants to carry on the job.

NEW DELHI;

Dated the 22nd February, 1965.

DINEN BHATTACHARAYA

K. K. WARIOR

VII

It was after prolonged, exhaustive and protracted enquiries extending over some years, that the law relating to companies in India was thoroughly recast and comprehensively codified in a voluminous self-contained enactment,—The Companies Act, 1956,—containing 658 Sections and XII Schedules. It was further amended extensively in 1960, 1962, 1963 and 1964. The present Bill,—The Companies (Second Amendment) Bill of 1964, seeks once again to amend it very extensively.

The continual amendment of such an important enactment governing a very significant and most active part of the Private Sector in the Indian economy is itself a sufficient condemnation of the present Bill. This *a priori* view is strengthened by a closer examination of the ostensible reasons advanced in support of it, namely, that it seeks:

(a) to implement the recommendations of the Commission of Inquiry into the administration of the Dalmia-Jain Companies, as reported upon by the Daphtary-Sastri Committee;

(b) to strengthen the provisions relating to investigation into the affairs of companies;

(c) to provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector; and

(d) to simplify some of the procedural requirements which are at present burdensome to the companies without being of corresponding advantage to Government.

Of the foregoing reasons for introducing this Bill, it is plain that the last of them was merely incidental. The principal reasons advanced in support of this measure were admittedly those indicated at (a), (b) and (c) above. But on examining these more closely, it transpires that as regards the first and most important of them there was no evidence at all,—certainly none was adduced on behalf of Government before the Joint Committee,—that fraudulent practices of the kind discovered in the Dalmia-Jain Companies were "legally" possible, or had in fact been resorted to, even under the present state of the law. It is important to note in this connection that the legal framework within which industrial and commercial concerns in the corporate sector have now to operate is far more complex than was the case before 1953. They have now to comply not merely with the complicated and rigorous provisions of an all-embracing Companies Act, but also with other relevant and very comprehensive group of legislation such as that regulating the Issue of Capital, the licensing

of new industrial units and of their expansion, the licensing of Import of Capital Goods, Raw Materials, Stores and Spares, the Regulation of Foreign Exchange transactions and the like. With this sort of multifarious and integrated regulatory legislation already in force, governing almost every important area of activity, superimposed upon the already comprehensive Companies Act, *it is in my opinion quite unlikely that " legal frauds " in company management and administration of the kind and magnitude disclosed in the Dalmia-Jain Companies can occur any longer.*

The other two purposes advanced in support of this Bill, namely to strengthen the provisions relating to investigation into the affairs of companies and to provide for more effective audit in dealing with cases of dishonesty and fraud, are also entirely unsupported by any evidence justifying the need for such extra-ordinarily *wide-sweeping powers* as are sought to be conferred upon the Central Government for these purposes by this Bill. Moreover, while the "Statement of Objects and Reason" refers in this connection to additional powers required in dealing with specific cases of this type, the relevant clauses in the Bill go much further and are designed to confer upon the Central Government draconian powers over *all* companies, regardless of the character of their management.

I am firmly of opinion that this measure is both unnecessary and undesirable. It will confer powers upon the Company Law Board and/or the Central Government in relation to the generality of companies which are quite uncalled for. It will cast an unjust and grievous burden upon the vast majority of honest companies, most of them engaged in medium or small scale industries, just at a time when the most urgent need is the private sector should rapidly and vigorously go forwaid and produce more and more goods and services so that the economy, which has been stagnant in recent years and is now in the grip of acute inflation, may once again become as buoyant as it was some four or five years ago. If this measure is enacted the capital and investment market will continue to remain depressed ; the economy will remain stagnant ; and perhaps, its gravest consequence will be not merely to discourage in foreign investment and/or collaboration in Indian projects, but even to induce a good deal of dis-investment. I am strongly of opinion, therefore, that this Bill should be withdrawn.

Subject to my basic objection to the Bill as a whole I turn now to some of the specific clauses of Bill as reported by the Joint Committee. While the Bill has emerged from the Committee with some improvement, there remain many matters in respect of which it still requires to be considerably altered. Some of the more important of these are mentioned below:—

Clause 13—This clause suffers from two major defects, namely:

(1) The period of currency of blank transfers in the prescribed form should be twelve months, instead of six.
Without this, the liquidity of the share markets will be seriously impaired.

(2) In the case of Shares held in fiduciary capacity, there shoud be no time limit to the currency of blank transfers as in the · case of Shares pledged with banks and other financial institutions.

Clause 20 (*Orignal Clause* 21)—In this clause as orginally drafted it was provided (by means of a proviso) that the books of account of a company shall be open to inspection during business hours by the Registrar or by any Officer authorised by Government *provided* he was of opinion that sufficient cause existed for such inspection That proviso has been deleted by the Joint Committee on the ground that the inspection by the Registrar or an Officer authorised by the Company Law Board should be a routine feature of the administration of Company Law in this country. This is not reasonable, for I feel that such inspection by the Registrar or other Officer should be made only if he is satisfied that sufficient and specific cause exists for the inspection. The original proviso should therefore be restored.

Clause 21 (*Original Clause* 22)—Sub-Clause (b) should be deleted altogether, as it virtually confers unlimited power upon the Central Government to enact substantive legislation concerning the duties and responsibilities of Auditors far beyond anything contemplated by Section 227 of the principal Act.

Clause 23 (*Original Clause* 24) —This Clause, which provides for the compulsory audit of *cost accounts* of companies engaged in production, processing, manufacturing or mining activities, should be deleted altogether for the following reasons :—

(i) The regular maintenance of proper cost accounts, which it implies, presupposes a sophisticated stage of industrial development and management accounting which it will take considerable time to reach in this country.

(ii) It was admitted in the evidence submitted before the Joint Committee on behalf of two such authoritative bodies as Institute of Chartered Accountants of India and the Institute Cost & Works Accountants of India that no more than about 20 per cent of companies in India were maintaining any sort of cost accounts properly so called.

(iii) To require a statutory audit of cost accounts would, in these circumstances, be wholly premature.

(iv) It would impose an unwarranted burden upon small companies engaged in medium and small scale industries.

(v) It was also admitted that the number of experienced accountants, especially Cost Accountants, competent to undertake such audit was strictly limited, there being only some eight or ten firms of Cost Accountants in practice.

(vi) Moreover, to prescribe an audit of cost accounts independently of the audit of financial accounts, as is proposed in this clause, could lead to conflict and confusion as between the two.

(vii) The disclosure of the cost structure of companies engaged in competitive enterprises would cause serious disadvantage to the best managed companies ; and this sort of prospect (of publicity being given to confidential cost data) would almost certainly persuade many prospective foreign concerns not to proceed with their investment and/or collaboration projects in India. It would be no answer to their genuine apprehensions in this respect that the Cost Audit Report would be submitted only to the Central Government and would not have to be filed with the Registrar of Companies. Once a statutory Cost Audit was known to have been undertaken every Share-holder would be entitled to have a copy of the relevant Audit Report, with the result that the confidential character of the cost data could not possibly be preserved.

(viii) So far as is known, there is no other country in which companies are required *by law* to maintain cost accounts or to have them audited.

Clause 25 (*Original Clause* 26)—This clause, in so far as it applies to a company whose affairs are *not* under investigation, that is to say, to a body corporate "other than a body corporate referred to in sub-section (1) of Section 240)" needs extensive amendment. The effect of this Clause as it stands is that such a company would be treated in all respect on the same footing as if its affairs were also under investigation. This is most unreasonable and would be destructive of the credit and reputation of such companies.

Clause 51 (*Original Clause* 53)—By this Clause, which deletes Sections 410 to 415 of the Principal Act, it is proposed to abolish the

Company Law Advisory Commission and to appoint instead an "Advisory Committee" for advising upon "such matters arising out of the administration of this Act as may be referred to it" by the Central Government or the Company Law Board.

This Constitutes a complete reversal of policy without any justification whatsoever. The setting up of the Advisory Commission as a permanent feature of the Company Law administration was carefully examined by the Joint Committee on the Companies Bill, 1953 and was subsequently fully debated and approved in Parliament. On that occasion the then Finance Minister made the following statement in Parliament :—

> "In future the permanent Advisory Commission will have the duty of advising Government in respect of those matters which are specifically provided in the Bill.....it is my hope that in course of time this Advisory Commission will help Government to build up sound traditions for regulating the working of joint stock companies in this country."
>
> "I should say that the chances are that in almost all cases—I should not like to mention a percentage—we shall be guided by the advice of the Advisory Commission."
>
> "What I foresee is that a body of case law will grow as a result of the close working of the advisory commission and the central authority. Both of them will learn,.....what I expect is as a result of these discussions, a body of case law and philosophy will grow, and we shall jointly regulate the affairs of the companies in these respects which are in controversy today".

As against this, neither in the "Statement of Objects and Reasons" nor in the "Notes on Clauses" of the present Bill are there any reasons advanced for abolishing what was intended to be, and what indeed Parliament desired should be, a "permanent" Commission. Similarly, even in the Joint Committee, no attempt was made to justify this drastic proposal.

The Reports of the Company Law Advisory Commission and of the Company Law Administration for the last several years furnish ample proof of the usefulness of the Commission over these years. The present sections 410 to 415 include provisions which made it obligatory for Government to refer certain important matters to the Advisory Commission for their advice. In the discharge of its duties the Commission has done much to inspire confidence in the corporate sector *vis-a-vis* the exercise of purely executive powers by Government in a field in which such powers are vast and all pervasive and the

scope for arbitrary decisions extensive. The Advisory Commission has, in fact, gone a long way towards fulfilling those hopes and expectations with which it was constituted with the full approval of Parliament. In these circumstances, I am unable to see any justification whatsoever for replacing the Commission by an "Advisory Committee" which need not be consulted by Government at all and which, having no statutory powers or duties, can fill only a minor role of little value either to Government or to the corporate sector. This Clause should therefore be deleted.

Clause 56 (*Original Clause* 58)—This is a most extraordinary provision. It seeks to substitute the present Section 635A of principal Act by two new Sections 635A and 635AA which would have the effect not merely of protecting the Government and public servants for anything done in good faith but also of shielding informers and blackmailers even when, *acting in bad faith*, they may active the machinery of Government against innocent parties. To claim the privilege of secrecy, even against courts and tribunals, so as to resist the demand by injured parties for the disclosure of the source of information which may have resulted in their harassment or in wrongful action being taken against them, can never be justified. The sort of claim, if conceded, would almost certainly lead to grave abuses. It would lay the basis for false information by interested parties and even blackmailers against a company and its management; and it can also be misused as a weapon for political purpose. In view of this, the proposed new section 635 AA sought to be inserted by this Clause should be deleted.

Bill No. 64 B of 1964

THE COMPANIES (SECOND AMENDMENT) BILL, 1964

[As reported by the Joint Committee]

(Words sids-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

further to ammend the Companies Act, 1956

Be it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:—

1. (1) Short title and commencement.—This Act may be called the Compainies (* * Amendment) Act, 1965.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Amendment of Section 1 of 1956—In section 1 of the Companies Act, 1956 1 of 1956 (hereinafter referred to as the principal Act), in sub-section (3), the following further proviso shall be inserted at the end, namely:—

"Provided further that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify."

3. Amendment of Section 2.—In section 2 of the principal Act

(*i*) in clause (8), after the word "deeds" the word "vouchers" shall be inserted;

(*ii*) in clause (30), after the words "manager or secretary," the words "or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act," shall be inserted.

4. Amendment of Section 10 E.—In section 10E of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) The Bord, with the previous approval of the Central Govern ment, may, by order in writing, authorize the chairman or any of its other members or its principal officer (whether known as secretary or by any other name) to exercise and discharge, subject to such condi tions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board."

5. Amendment of Section 13.—In section 13 of the principal Act, in sub-section (1),—

(*i*) in clause (*b*), the word "and" shall be omitted;

(*ii*) for clause (*c*), the following clauses shall be substituted namely:—

"(*c*) in the case of a company in existence immediately, before the commencement of the Compaines (Amendment) Act, 1965, the objects of the compony;

(*d*) in the case of a company formed after such commencement:

(*i*) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects;

(*ii*) other objects of the company not included in sub-clause (*i*); and

(*e*) in the case of companies (other than trading corporations) with objects not confined to one State, the States to whose territories the objects extend."

6. Amendment of Section 21.—To section 21 of the principal Act, the following proviso shall be added, namely:—

'Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.'

7. Amendment of Section 43A.—In section 43 A of the principal Act, in sub-section (6), after clause (a), the following clause shall be inserted, namely:—

" (*aa*) to a private company in which shares are held by one or more bodies corporate incorporated outside India, which or each of which, if incorporated in India, would be a private company within the meaning of this Act, if the Central Government, on an application made to it in this behalf by that private company, by order so directs; or".

8. **Insertion of new Section 68A.**—After section 68 of the principal Act, under the sub-heading "*Prospectus*", the following section shall be inserted, namely :—

Personation for acquisition, etc., of shares.—"68A, (1) Any person who—

(*a*) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or

(*b*) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name,

shall be punishable with imprisonment for a term which may extend to five years.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person."

9. **Amendment of Section 69.**—In section 69 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely :—

"(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank—

(*a*) until the certificate to commence business is obtained under section 149, or

(*b*) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company,

and where such amount * * * has not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

In the event of any contravention of the provisions of the sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees."

10. Amendment of Section 73.—In section 73 of the principal Act, in sub-section (5), for the words "permission shall not be deemed to be refused". the words "it shall not be deemed that permission has not been granted" shall be subtituted.

11. Amendment of Section 75.—In section 75 of the principal Act,—

(*a*) to clause (*a*) of sub-section (1), the following proviso shall be added, namely;—

"Provided that the company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment * * * ";

(*b*) in sub-section (3), for the words "is inadeqnate, he may extend that period as he thinks fit", the following words shall be substituted, namely :—

"is or was inadequate, he may, on application made in that behalf by the company whether before or after the expiry of the said period, extend that period as he thinks fit";

(*c*) in sub-section (4), for the proviso, the following proviso shall be substituted, namely :—

"Provided that in case of contravention of the proviso to clause (*a*) of sub section (1), every such officer, and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to five thousand rupees."

12. Amendment of Section 76.—In section 76 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) in clause (*iii*), the word "and" occurring at the end shall be omitted:

(*ii*) in clause (*iv*), the word "and" shall be inserted at the end; and

(*iii*) after clause (*iv*), the following clause shall be inserted, namely:—

"(*v*) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration";

(*b*) after sub-section (4), the following sub-section shall be inserted, namely :—

"(*4A*) For the removal of doubts it is hereby declared that no commission shall be paid under clause (*a*) of sub-section (1) to anyperson on shares or debentures which are not offered to the public for subscription :

Provided that where a person has subscribed or agreed to subscribe under clause (*a*) ofs ub-section (1) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then, the company may pay commission to the first mentioned person in respect of such subscription."

13. Amendment of Section 108.—In section 108 of the principal Act, after sub-section (1), the following sub-sections shall be inserted, namely :—

"(*1A*) Every instrument of transfer of shares—

(*a*) Shall be in the prescribed form obtainable from the prescribed authority who shall stamp or otherwise endorse thereon the date on which it is issued, and

(*b*) shall be delivered to the company,--

(*i*) in the case of shares dealt in or quoted on a recognised stock exchange within six months from such date,

(*ii*) in any other case, within two months from that date.

(*1B*) Any instrument of transfer which is not in conformity with the provisions of sub-section (*1A*) shall not be accepted by a company after the expiry of six months of the coming into force of the Companies (Amendment) Act, 1965.

(*1C*) The provisions of sub-section (*1A*) shall not apply to any person depositing any shares with the State Bank of India

or any scheduled bank or financial institution approved by the Company Law Board by notification in the Official Gazette, by way of security for the repayment of any loan advanced to or the performance of any obligation undertaken by, such person.

(*1D*) Notwithstanding anything in sub-sections (*1A*) or sub-section (*1B*), where in the opinion of the Company Law Board it is necessary so to do to avoid hardship in any case, the Board may on an application made to it in that behalf, extend the periods mentioned in those sub-sections by such further time as it may deem fit and the Central Government shall cause to be shown in the annual report laid before the Houses of Parliantment under section 638 the number of extensions granted hereunder and the period of each such extension."

14. Amendment of Section 111.—In section 111 of the principal, Act,. except in sub-section (*4A*) for the words "the Central Government" or the words "that Government", wherever they occur, the words "the Tribunal" shall, in respect of any appeal made after the commencement of this Act, be substituted.

15. Amendment of Section 149,—In section 149 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely :—

"(*2A*) Without prejudice to the provisions of sub-section (1) and sub-section (2) a company having a share capital whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business—

(*a*) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, in relation to any of the objects stated in its memorandum in pursuance of clause (*c*) of sub-section (*1*) of section 13;

(*b*) if such company is a company formed after such commencement, in relation to any of the objects stated in its menorandum in pursuance of sub-clause (*ii*) of clause (d) of sub-section (*1*) of the said section,

unless —

(*i*) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting ; and

(*ii*) there has been filed with Registrar a duly verified declaration by one of the directors or the secretary, in the prescribed form, that clause (*i*) has been complied with ;

and if the company commences any such business in contravention of this sub-section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

Explanation.—A company shall be deemed to commence any business within the meaning of clause (*a*) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 in relation to any of the objects referred to in the said clause.

(*2B*) Notwithstanding anything contained in sub-section (*2A*) where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (including the casting vote, if any, of the, chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Company Law Board may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting. "

16. Amendment of section 153B.—In section 153B of the principal Act, in sub section (4),—

(*i*) in clause (*b*), for the words where the trust money invested in shares in, or debentures of, a company ", the words " where the value of the shares in, or debentures of, a company, held in trust '" shall be substituted ;

(*ii*) the following *Explanation* shall be inserted at the end, namely : —

' *Explanation.*—The expression " the value of the shares in, or debentures of, a company " in clause (*b*) means,—

(*i*) in the case of shares or debentures acquired by way of allotment or transfer for consideration, the cost of acquisition thereof, and

(*ii*) in any other case, the paid-up value of the shares or debentures.

*

17. Amendment of section 163.—In section 163 of the principal Act, in sub section (1), in the proviso, in clause (*i*), the word "and" shall be inserted at the end and clause (*ii*) shall be omitted.

18. Amendment of section 174.—In section 174 of the principal Act, in sub-section (1), for the words "public company, and two members personally present in the case of a private company", the words, brackets, figures and letter "public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company," shall be substituted.

19. Amendment of section 203.—In section 203 of the principal Act, in sub-section (6), the words, brackets and figures 'and for the purposes of the said sub clause (*ii*), the expression "officer" shall include any person in accordance with whose directions or instructions the Board of directors of the company has been accustomed to act' shall be omitted.

20. Amendment of section 209.—In section 209 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) in clause (*b*), the word "and" occurring at the end shall be omitted;

(*ii*) in clause (*c*), the word "and" shall be inserted at the end;

(*iii*) after clause (*c*), the following clause shall be inserted namely :—

"(*d*) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour as may be prescribed, if such class of companies, is required by the Central Government to include such particulars in the books of account;"

(*b*) for sub-section (4), the following sub-section shall be substituted, namely :—

"(4) (*a*) The books of account and other books and papers shall be open to inspection by any director during business hours.

(*b*) The books of account and other books and papers shall be open to inspection during business hours—

(*i*) by the Registrar,

(*ii*) by any officer of Government authorised by the Central Government in this behalf :

* *

Provided * * * that such inspection may be made without giving anyprevious notice to the company or any officer thereof.

(*c*) The Registrar or such officer may during the course of inspection—

(*i*) make or cause to be made copies of the books of account and other books and papers,

(*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(*d*) In order to enable the Registrar or such officer to make inspection of the books of account and other books and papers of the company, it shall be the duty of the company—

(*i*) to produce to the Registrar or such officer such books of account and other books and papers of the company as the Registrar or su h officer may require,

(*ii*) otherwise to give to the Registrar or such officer all assistance in connection with the inspection which the company is reasonably able to give.";

(*c*) In sub-section (*4A*), after the words "preceding the current year", wherever they occur, the words "together with the vouchers relevant to any entry in such books of account" shall be inserted;

(*d*) in sub-section (6),—

(*i*) in clause (*a*), the following shall be inserted at the end, namely :—

"and all officers and other employees and agents [as defined in sub-section (*6*) of section 240 but excluding bankers and legal advisers] of such managing agent or secretaries and treasurers";

(*ii*) in clause (*c*), the word "and" occurring at the end shall be omitted ;

(*iii*) in clause (*d*), the word "and" shall be inserted at the end;

(*iv*) after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) whether or not a company has a managing agent or secretaries and treasurers, every officer and other employee and agent (defined as aforesaid) of the company.".

21. Amendment of section 227.—In section 227 of the principal Act,—

(*a*) after sub-section (1), the following sub section shall be inserted, namely :—

"(*1A*) Without prejudice to the provisions of sub-section (1), the auditor shall inquire—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members ;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company ;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company ;

(*d*) whether loans and advances made by the company have been shown as deposits ;

(*e*) whether personal expenses have been charged to revenue account ;

(*f*) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.";

(*b*) after sub-section (4), the following sub-section shall be inserted, namely : —

"(4*A*) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein :

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, 38 of 1949 in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consulation is not necessary or expedient in the circumstances of the case.".

22. Amendment of Section 228.—In section 228 of the principal Act, in sub-section (4), for the words " may, by rules made in this behalf, exempt ", the words " may make rules providing for the exemption of " shall be substituted.

23. Insertion of new Section 223B.—After section 233A of the principal Act, under the sub-heading " *Audit* ", the following section shall be inserted, namely:—

Audit of cost accounts in certain cases.—"233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company engaged in production, processing, manu. facturing or mining activities, the Central Government may, by general or special order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be either a cost accountant within the meaning of the Cost and Works Accountants Act, 1959, 23 of 1959 or any such chartered accountant within the meaning of the Chartered Accountants Act, 1949, 38 of 1949 or * * * other person, as possesses the prescribed qualifications.

(2) An auditor under this section shall be appointed by the company in general meeting and the provisions of section 224 shall apply, as far as may be, in relation to such auditor as they apply in relation to an auditor appointed under that section.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the Company Law Board in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company."

* * * * * *

24. Amendment of section 234A. —In section 234A of the principal Act,—

(*a*) in sub section (*1*), after the words "make an application", the words "to the Tribunal or" shall be inserted;

(*b*) in sub-section (*2*), for the word "Magistrate", the words "Tribunal or Magistrate; as the case may be," shall be substituted;

(*c*) in sub-section (*3*),—

(*i*) for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*ii*) in the proviso, after the words "extracts from them", the words "or place identification marks on them or any part thereof" shall be inserted;

(*d*) in sub-section (4), after the word "search" and the word "searches", the words "or seizure" and the words "or seizures" shall respectively be inserted.

25. Amendment of section 240.—In section 240 of the principal Act,—

(*a*) in clause (*a*) of sub-section (*1*), for the words "to produce to an inspector", the words "to preserve and to produce to an inspector or any person authorised by him in this behalf," shall be substituted;

(*b*) after sub-section (*1*), the following sub sections shall be inserted, namely :—

"(*1A*) The inspector may, with the previous approval of the Central Government, require any body corporate * * [other than a body corporate referred to in sub-section (*1*)] to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(*1B*) The inspector may keep in his custody any books and papers produced under sub-section (*1*) or sub-section (*1A*) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (*1A*) are furnished to the inspector, he shall return those books and papers to the body corporate *** concerned.";

(*c*) for sub-sections (*2*), (*3*), (*3A*) and (*4*), the following sub-sections shall be substituted, namely :—

"(2) An inspector may examine on oath—

(*a*) any of the persons referred to in sub-section (*1*); and

(*b*) with the previous approval of the Central Government, any other person,

in relation to the affairs of the company, other body corporate, managing agent, secretaries and treasurers or associate, as the case may be; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(3) If any person fails without reasonable cause or refuses—

(*a*) to produce to an inspector or any person authorised by him in this behalf any book or paper which it is his duty under sub-section (*1*) or sub-section (*1A*) to produce; or

(*b*) to furnish any information which it is his duty under sub-section (*1A*) to furnish; or

(*c*) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section or

(*d*) to sign the notes of any examination referred to in sub-section (5),

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, and also with a further fine which may extend to two hundred rupees for every day after the first during which the failure or refusal continues.";

(*d*) in sub-section (*5*), the word, brackets and figure "or (*4*)" shall be omitted.

26. Amendment of section 240A.—In section 240A of the principal Act,—

(*a*) in sub-section (*1*), after the words "make an application", the words "to the Tribunal or " shall be inserted;

(*b*) in sub-section (*2*), for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted ;

(*c*) in sub-section (*3*)—

(*i*) for the word "Magistrate", the words "Tribunal or Magistrate, as the case may be," shall be substituted;

(*ii*) the following proviso shall be inserted at the end, namely :—

"Provided that the inspector may, before returning such books and papers as aforesaid, place indentification marks on them or any part thereof " ;

(*d*) in sub-section (*4*), after the word "search" and the word "searches", the words "or seizure" and the words "or seizures" shall respecitively be intserted.

27. Amendment of section 241.—In section 241 of the principal Act, in clause (*a*) of sub-section (*2*), after the words "any report", the brackets and words "(other than an interim report)" shall be inserted.

28. Insertion of new section 250A.—After section 250 of the principal Act, the following section shall be inserted, namely :—

Voluntary winding up of company, etc., not to stop investigation proceedings.—"250A. An investigation may be initiated under section 235, 237, 239, 247, 248 or 249 notwithstanding that—

(*a*) an application has been made for an order under section 397 or section 398; or

(*b*) the company has passed a special resolution for voluntary winding up.

and no invesitigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (*a*) has been made or a special resolution referred to in clause (*b*) has been passed."

29. Amendment of section 252 —In section 252 of the principal Act,—

(*i*) in sub-section (*1*), for the words "public company", the words, brackets, figures and letter "public company (other than a public company which has become such by vitrtue of section 43A)" shall be substituted;

(*ii*) in sub-section (*2*), for the word " private ", the word " other " shall be substituted ;

30. Amendment of section 259.—To section 259 of the principal Act, the following proviso shall be added, namely :—

"Provided that where such permissible maximum is twelve or less than twelve, no apporval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve."

31. Amendment of section 264.—In section 264 of the principal Act,—

(*i*) in sub-section (1), for the words "other than a person", the words "other than a director retiring by rotation or otherwise or a person" shall be substituted;

(*ii*) for sub-section (2), the following sub section shall be substituted, namely:—

"(2) A person other than—

(*a*) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or

(*b*) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office, or

(*c*) a person named as a director of the company under its articles as first registered.

shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent in writing to act as such director".

32. Amendment of section 266.—In section 266 of the principal Act, sub-section (4) shall be omitted.

33. Omission of section 271.—Section 271 of the principal Act shall be omitted.

34. Amendment ot section 273.—In section 273 of the principal Act, for the word and figures "to 272", the word and figures "and 272", shall be substituted.

35. Amendment of section 280.—In section 280 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) Save as otherwise provided in this section, a person shall not be capable of being appointed, or shall not act as a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of seventy-five years.

(2) A director of a Public company or of a private company which is a subsidiary of a public company, shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy-five years :

Provided that a director who has attained the age of seventyfive years before the commencement of the Companies (* * * Amendment) Act, 1965 and is in office at such commencement shall vacate his office at the conclusion of the first annual general meeting held after such commencement."

36. Omission of section 281.—Section 281 of the principal Act shall be omitted.

37. Amendment of section 282.—In section 282 of the principal Act, for the words "sixty-five years", the words "sevently-five years" shall be substituted.

38. Amendment of section 285.—In section 285 of the principal Act, for the words beginning with "three calendar months" and ending with "and the date of the next meeting", the words "three months and at least four such meetings shall be held in every year" shall be substituted.

39. Insertion of new section 294 A.—After section 294 of the principal Act the following section shall be inserted, namely :—

Prohibition of payment of compensation to sole selling agents for loss of office in certain cases.—"294A. (1) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases :—

(*a*) where the appointment of the sole selling agent ceases to be valid by virtue of sub-section (2 A) of section 294 ;

(*b*) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation ;

(*c*) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid ;

(*d*) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in, the conduct of his duty as the sole selling agent ;

(*e*) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

(2) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period."

40. Amendment of section 303.— In section 303 of the principal Act, in sub-section (2), the words "or in any of the particulars contained in the register" and the proviso shall be omitted.

* * * * *

41. Amendment of section 309.—In section 309 of the principal Act,—

(*i*) in sub-section (1), the following shall be added at the end, namely :—

"and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity :

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

(*a*) the services rendered are of a professional nature and

(*b*) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession * * * ";

(*ii*) for sub-section (4), the following sub-section shall be substituted, namely :—

"(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration—

either

(*a*) by way of a monthly payment with the approval of the Central Government ;

or

(*b*) by way of commission if the company by special to resolution authorises such payment :

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(*i*) one per cent of the net profits of the company, if the company has a managing or whole-time director, a managing agent or secretaries and treasurers or a manager;

(*ii*) three per cent of the net profits of the company, in any other case :

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent, or, as the case may be, three per cent of its net profits ".

42. Amendment of section 310.—To section 310 of the principal Act, the following proviso shall be added, namely :—

"Provided that the approval of the Central Governmeut shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a committee thereof attended by any such director and the amount of such fee after such increase does not exceed two hundred and fifty rupees".

43. Amendment of section 314.—In section 314 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) for the words "previous consent", the word "consent" shall be substituted ;

(ii) for the proviso, the following proviso shall be substituted, namely:-

" Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit :

Provided further that where a relative of a director or a firm in which such relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowdledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later. " ;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, managing agent, secretaries and treasurers or the manager, concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

44. Amendment of section 370.—In Section 370 of the principal Act,—

(a) in sub-section (1)—

(i) the words "which is under the same management as the leading company" shall be omitted;

(ii) the following provisos shall be added at the end, namely:—

" Provided that no special resolution shall be necessary in the case or loans made to other bodies corporate not under the same management as the lending company where the aggregate of such loans does not exceed ten per-cent, of the aggregate of the subscribed capital of the lending company and its free reserves:

Provided further that the aggregate of the loans* * made to all bodies corporate shall not exceed without the prior approval of the Central Government—

(a) thirty per cent of the aggregate of the subscribed capital of the lending company and its free reserves where all such other bodies corporate are not under the same management as the lending company;

(b) twenty per cent of the aggregate of the subscribed capital of the lending company and its free reserves where all such other bodies corporate are under the same management as the lending company.

Explanation.—If a special resolution has been passed by the lending company authorising the making of loans up to the limit of thirty per cent of the aggregate specified in

clause (*a*), or, as the case may be, of twenty per cent. of the aggregate specified in clause (*b*), of the second proviso, then, no further special resolution or resolutions shall be deemed to be necessary for the making of any loan or loans within such limit." ;

(*b*) in sub-section (*1C*), in clause (*b*), after the words " provided by the landing company", the wofds "in relation to any such body corporate" shall be inserted ;

(*c*) in sub-section (*1D*), for the words "every such loan, guarantee or security", the words, brackets, figure and lettter "every loan, guarantee or security referred to in sub-section (1C)" shall be substituted ;

(*d*) in sub-section (*2*), clause (*a*), for sub-clause (*iii*), the following sub–clauses shall be substituted, namely:—

"(*iii*) by a banking company, or an insurance company, in the ordinary course of its business ;

(*iv*) by a private company, unless it is a subsidiary of a public company ;

(*v*) by a company established with the object of financing industrial enterprises ; " ;

(*e*) after sub-section (4), the following sub-section shall be inserted, namely :—

" (5) Where before the commencement of the Companies (Amendment) Act, 1965, any loan, guarantee or security has been made, given or provided by a company which could not have been made, given or provided under this section as amended by that Act, and such loan, guarantee or security is outstanding at such commencement, the company shall, within six months from such commencement, enforce the repayment of the loan made or, as the case may be, revoke the guarantee given or the security provided, notwithstanding any agreement to the contrary :

Provided that the aforesaid period of six months may be extended by the Company Law Board on an application made to it in that behalf by the company.".

45. Amendment of section 372.—In section 372 of the principal Act, in sub-section (13), after the word, brackets and figure "sub-section (2)", the words, brackets and figure "and sub section (5)" shall be inserted.

46. Amendment of section 391.—In section 391 of the principal Act, to sub-section (2), the following proviso shall be added, namely :—

"Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.".

47. Amendment of section 394.—In section 394 of the principal Act, to sub-section (1), the following provisos shall be added, namely :—

"Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (*iv*) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.".

48. Insertion of new section 394A.—After section 394 of the principal Act, the following section shall be inserted, namely :—

Notice to be given to Central Government for applications under sections 391 and 394.—"394A. The Court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.".

49. Amendment of section 395.—In section 395 of the principal Act,—

(*a*) in sub-section (*3*), for the words "the transferor company shall thereupon register the transferee company as the holder of those shares :", the following shall be substituted, namely :—

"the transferor company shall—

(*a*) thereupon register * * the transferee company as the holder of those shares, and

(*b*) within one month of the date of such registra tion inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company :" ;

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely :—

"(*4A*). (*a*) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely :—

(*i*) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed ;

(*ii*) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;

(*iii*) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;

(*iv*) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (*i*) or which sets out such information in a manner likely to give a false impression ; and

(*v*) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(*b*) Whoever issues a circular referred to in sub-clause (*iii*) of clause (*a*), which has not been registered, shall be punishable with fine which may extend to five hundred rupees.".

50. Insertion of new section 396A.—In the principal Act, in Chapter V of Part VI, after section 396, the following section shall be inserted, namely:—

Preservation of books and papers or amalgamated company.

"396A. The books and papers of a company which has been, amalgamated with, or whose shares have been acquired by another company under this Chapter shall not be disposed of

without the prior permission, of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first mentioned company or its amalgamation or the acquisition of its shares.".

51. Amendment of Chapter VII of Part VI.—(1) In the principal Act, in Chapter VII of Part VI,—

(*a*) in the heading, for the words "ADVISORY COMMISSION", the words "ADVISORY COMMITTEE" shall be substituted;

(*b*) for sections 410, 411, 412, 413, 414 and 415, the following section shall be substituted, namely:—

Appointment of Advisory Committee.—"410. For the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of this Act as may be referred to it by that Government or Board, the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications".

(2) All cases pending before the Advisory Commission immediately before the commencement of this Act shall stand transferred to the Central Government on such commencement and the Central Government may dispose of such cases in such manner as it deems fit.

52. Amendment of section 497.—In section 497 of the principal Act,—

(*a*) in sub-section (3), for the words "Registrar a copy of the account, and shall make a return to him", the words "Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them" shall be substituted;

(*b*) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable

facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(*6B*) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.".

53. **Amendment of section 509.**—In section 509 of the principal Act,—

(*a*) in sub-section (3), for the words " Registrar a copy of the account, and shall make a return to him ", the words " Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them ", shall be substituted ;

(*b*) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely :—

" (5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of report to the Court the company shall be deemed to be dissolved.

"Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.".

47. Amendment of section 394.—In section 394 of the principal Act, to sub-section (1), the following provisos shall be added, namely :—

"Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (*iv*) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest."

48. Insertion of new section 394A.—After section 394 of the principal Act, the following section shall be inserted, namely:—

Notice to be given to Central Government for applications under sections 391 and 394.—"394A. The Court shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections."

49. Amendment of section 395.—In section 395 of the principal Act,—

(*a*) in sub-section (*3*), for the words "the transferor company shall thereupon register the transferee company as the holder of those shares:", the following shall be substituted, namely:—

"the transferor company shall—

(*a*) thereupon register * * the transferee company as the holder of those shares, and

(*b*) within one month of the date of such registra tion inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company :" ;

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely :—

"(*4A*). (*a*) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely :—

(*i*) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed ;

(*ii*) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;

(*iii*) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;

(*iv*) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (*i*) or which sets out such information in a manner likely to give a false impression ; and

(*v*) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.

(*b*) Whoever issues a circular referred to in sub-clause (*iii*) of clause (*a*), which has not been registered, shall be punishable with fine which may extend to five hundred rupees.".

50. Insertion of new section 396A.—In the principal Act, in Chapter V of Part VI, after section 396, the following section shall be inserted, namely:—

Preservation of books and papers or amalgamated company.

"396A. The books and papers of a company which has been, amalgamated with, or whose shares have been acquired by another company under this Chapter shall not be disposed of

without the prior permission, of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first mentioned company or its amalgamation or the acquisition of its shares.".

51. Amendment of Chapter VII of Part VI.—(1) In the principal Act, in Chapter VII of Part VI,—

(*a*) in the heading, for the words "ADVISORY COMMISSION", the words "ADVISORY COMMITTEE" shall be substituted;

(*b*) for sections 410, 411, 412, 413, 414 and 415, the following section shall be substituted, namely:—

Appointment of Advisory Committee.—"410. For the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of this Act as may be referred to it by that Government or Board, the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications".

(2) All cases pending before the Advisory Commission immediately before the commencement of this Act shall stand transferred to the Central Government on such commencement and the Central Government may dispose of such cases in such manner as it deems fit.

52. Amendment of section 497.—In section 497 of the principal Act,—

(*a*) in sub-section (3), for the words "Registrar a copy of the account, and shall make a return to him", the words "Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them" shall be substituted;

(*b*) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable

facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the Court the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(*6B*) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.".

53. Amendment of section 509.—In section 509 of the principal Act,—

(*a*) in sub-section (3), for the words " Registrar a copy of the account, and shall make a return to him ", the words " Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them ", shall be substituted ;

(*b*) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely :—

" (5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of report to the Court the company shall be deemed to be dissolved.

(6*A*) If on such scrutiny the Official Liquidator makes a report to the Court that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the Court shall by order direct the Official Liquidator to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the Court may deem fit.

(6*B*) On the receipt of the report of the Official Liquidator on such further investigation the Court may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court therein or make such other order as the circumstances of the case brought out in the report permit.".

54 Insertion of new section 511A.—After section 511 of the principal Act, the following section shall be inserted, namely:—

Application of section 454 to voluntary winding up.—

'511A. The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the Court except that references to—

(*a*) the Court shall be omitted;

(*b*) the Official Liquidator or the provisional liquidator shall be construed as references to the liquidator; and

(*c*) the "relevant date" shall be construed as references to the date of commencement of the winding up.'.

55 Amendment of section 593.—In section 593 of the principal Act, in clause (c), the words "or the particulars contained in the list of the directors and secretary" shall be omitted.

56 Substitution of new sections for section 635A.—For section 635A of the principal Act, the following sections shall be substituted, namely:—

Protection of acts done in good faith.—"635 A. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules orders made thereunder, or in respect of the publication by or under the authority of the Government of such officer of any report, paper or proceedings.

Non-disclosure of information in certain cases.—635AA. Notwithstanding anything contained in any other law for

the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any court, tribunal or other authority whence he got any information which—

(*a*) has led the Central Government to direct a special audit under section 233A or to order an investigation under sections 235, 237, 247, 248 or 249; or

(*b*) is or has been material or relevant in connection with such special audit or investigation.".

57. Insertion of new section 637B.—After section 637A of the principal Act, under the sub-heading "*Grant of approval, etc., subject to conditions and levy of fees on applications*", the following section shall be inserted, namely :—

Condonation of delays in certain cases.—"637B. Notwithstanding anything contained in this Act.—

(*a*) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, respect of that Government may for reasons to be recorded in writing, condone the delay;

(*b*) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay."

58. Insertion of new section 640B.—After section 640A of the principal Act, under the sub-heading "*Schedules, Forms and Rules*", the following section shall be inserted, namely :—

Forms of, and procedure in relation to, certain applications. "640 B. (1) Every application made to the Central Government under sections 259, 268, 269, 310, 311, 326, 328, 329, 332, 343, 345, 346, 352, 408, or 409 shall be in such form as may be prescribed.

(2) (*a*) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(*b*) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(*c*) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(*d*) Nothing in clause (*a*), (*b*) or (*c*) shall apply to a private company which is not the managing agent of a public company.".

59. Amendment of Schedule IA.—In Schedule IA of the principal Act, serials 23 to 49 (both inclusive) shall be omitted.

60. Minor amendments.—The amendments directed in the Schedule, being amendments relating to matters of minor detail or of a clarificatory or consequential nature, shall be made in the sections of the principal Act specified therein.

THE SCHEDULE

(*See* Section 60)

MINOR AMENDMENTS IN THE COMPANIES ACT, 1956

Section 2.—In clause (*49A*), for "Tribunal constituted", substitute "Companies Tribunal constituted".

Section 10A.—In sub-section (*1*), for "constitute a Tribunal", substitute "constitute a Tribunal to be known as the Companies Tribunal".

Section 44.—In clause (*b*) of sub-section (*1*), for "fourteen", substitute "thirty".

Section 75.—For "one month", in all places, substitute "thirty days".

Section 95.—In sub-section (*1*), for "one month", substitute "thirty days".

Section 97.—In sub-section (*1*), for "fifteen", substitute "thirty".

Section 107.—In sub-section(5), for "fifteen", substitute "thirty".

Section 125.—For "twenty-one", in all places, substitute "thirty"

Section 127.—In sub-section (*1*), for "twenty-one", in all places, substitute "thirty."

Section 128.—For "twenty-one", substitute "thirty"

Section 137.—In sub-section (1), for "fifteen", substitute "thirty"

Section 138.—In sub-section (1), for "twenty-one", substitute "thirty".

Section 146.—For "twenty-eight" and "twenty-eight", substitute respectively "thirtieth" and "thirty".

Section 156.—For "Court" and "fourteen" in all places, substitute respectively "Tribunal" and "thirty".

Section 157.—In sub-section (2), for "one month", in both places, substitute "thirty days".

Section 159.—In sub-section (1), for "forty-two", substitute "sixty".

Section 160.—In sub-section (1), for "forty-two", substitute "sixty"

Section 192.—In sub-section (1), for "fifteen", substitute "thirty"

Section 193.—For "fourteen" in all places, substitute "thirty"

Section 220.—In sub-section (1), for "at the same time as the copy of the annual return referred to in section 161 ', substitute "within thirty days from the date on which the balance-sheet and the profit and loss account were so laid".

Section 363.—In sub-section (2), for "twenty-eight", in all places, substitute "thirty"

Section 394.—In sub-section (3), for "fourteen" substitute "thirty"

Section 404.—In sub-section (3), for "fifteen", substitute "thirty"

Section 445.—In sub-section (1) and in sub-section (1*A*), for one month", substitute "thirty days"

Section 481.—In sub-section (2), for "fourteen" substitute "thirty".

Section 509.—In sub-section (6), for "twenty-one" substitue, "thirty".

Section 516.—In sub-section (1), for "twenty-one" substitute "thirty"

Section 559.—In sub-section (2), for "twenty-one" substitute "thity

Section 592.—In sub-section (1), for one month" substitute "thirty days".

S. L. SHAKDHER,
Secretary.

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